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E-filing

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MHP

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

v.

JOSEPH N. AZAR,

Defendant.

CV 09

1881

~~[PROPOSED]~~  
FINAL JUDGMENT

The Securities and Exchange Commission having filed a Complaint and Defendant Joseph N. Azar having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section

1 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and  
 2 Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or  
 3 instrumentality of interstate commerce, or of the mails, or of any facility of any national  
 4 securities exchange, in connection with the purchase or sale of any security:

- 5 (a) to employ any device, scheme, or artifice to defraud;
- 6 (b) to make any untrue statement of a material fact or to omit to state a material fact  
 7 necessary in order to make the statements made, in the light of the circumstances  
 8 under which they were made, not misleading; or
- 9 (c) to engage in any act, practice, or course of business which operates or would  
 10 operate as a fraud or deceit upon any person.

## 11 II.

12 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant  
 13 and Defendant's agents, servants, employees, attorneys, and all persons in active concert or  
 14 participation with them who receive actual notice of this Final Judgment by personal service or  
 15 otherwise are permanently restrained and enjoined from violating Section 14(e) of the Exchange  
 16 Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder, in  
 17 connection with any tender offer or request or invitation for tenders, from engaging in any  
 18 fraudulent, deceptive, or manipulative act or practice, by:

- 19 (a) purchasing or selling or causing to be purchased or sold the securities sought or to  
 20 be sought in such tender offer, securities convertible into or exchangeable for any  
 21 such securities or any option or right to obtain or dispose of any of the foregoing  
 22 securities while in possession of material information relating to such tender offer  
 23 that Defendant knows or has reason to know is nonpublic and knows or has  
 24 reason to know has been acquired directly or indirectly from the offering person;  
 25 the issuer of the securities sought or to be sought by such tender offer; or any  
 26 officer, director, partner, employee or other person acting on behalf of the  
 27 offering person of such issuer, unless within a reasonable time prior to any such  
 28

purchase or sale such information and its source are publicly disclosed by press release or otherwise; or

- (b) communicating material, nonpublic information relating to a tender offer, which Defendant knows or has reason to know is nonpublic and knows or has reason to know has been acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee, advisor, or other person acting on behalf of the offering person of such issuer, to any person under circumstances in which it is reasonably foreseeable that such communication is likely to result in the purchase or sale of securities in the manner described in subparagraph (a) above, except that this paragraph shall not apply to a communication made in good faith
- (i) to the officers, directors, partners or employees of the offering person, to its advisors or to other persons, involved in the planning, financing, preparation or execution of such tender offer;
  - (ii) to the issuer whose securities are sought or to be sought by such tender offer, to its officers, directors, partners, employees or advisors or to other persons involved in the planning, financing, preparation or execution of the activities of the issuer with respect to such tender offer; or
  - (iii) to any person pursuant to a requirement of any statute or rule or regulation promulgated thereunder.

### III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$126,998.21, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$17,702.41, and a civil penalty in the amount of \$126,998.21 pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. Defendant shall satisfy this obligation by paying \$271,698.83 within 10 business days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The

1 payment shall be delivered or mailed to the Office of Financial Management, Securities and  
 2 Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3,  
 3 Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Joseph N. Azar as a  
 4 defendant in this action; setting forth the title and civil action number of this action and the name  
 5 of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant  
 6 shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The  
 7 Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury.

8 IV.

9 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is  
 10 incorporated herein with the same force and effect as if fully set forth herein, and that Defendant  
 11 shall comply with all of the undertakings and agreements set forth therein.

12 V.

13 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain  
 14 jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

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 16  
 17 Dated: May 5, 2009

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 19  
 20 Approved as to form:

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 22 Michael Armstrong, Esq.  
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 25 Palo Alto, CA 94301  
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 ATTORNEY FOR DEFENDANT JOSEPH N. AZAR

